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United States
Circuit Court of Appeals
For the Ninth Circuit.

FRANK GATT and ANGELO MUSTILLO,
Plaintiffs in Error,
vs.
UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of
the Western District of Washington, Northern Division.

FILED
OCT 9 1925
F. D. MONCKTON,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF COUNSEL.

JOHN F. DORE, Esq., 1902-04 L. C. Smith Building,
Seattle, Washington,
Attorney for Plaintiff in Error.

THOS. P. REVELLE, Esq., 310 Federal Building,
Seattle, Washington,
Attorney for Defendant in Error.

C. T. McKINNEY, Esq., 310 Federal Building,
Seattle, Washington,
Attorney for Defendant in Error. [1*]

Comm'r #2370 as to Parent and Mustillo.
Bail \$750.00 each.

Direct as to Frank Gatt and John Gatt.

United States District Court, Western District of
Washington, Northern Division.

November, 1923, Term.

No. 8363.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

FRANK GATT, JOHN GATT, WILLIAM PAR-
ENT, *alias* WILLIAM PERRIN, and
ANGELO MUSTILLO,

Defendants.

*Page-number appearing at foot of page of original certified Transcript of Record.

INFORMATION.

BE IT REMEMBERED, that Thos. P. Revelle, Attorney of the United States of America for the Western District of Washington, who for the said United States in this behalf prosecutes in his own person, comes here into the District Court of the said United States for the District aforesaid on this 6th day of March, in this same term, and for the said United States gives the Court here to understand and be informed that as appears from the affidavit of Gordon B. O'Harra, made under oath, herein filed: [2]

COUNT I.

That on the eleventh day of November, in the year of our Lord one thousand nine hundred and twenty-three, about 8 miles north of the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdiction of this Court, FRANK GATT, JOHN GATT, WILLIAM PARENT, *alias* WILLIAM PERRIN, and ANGELO MUSTILLO, then and there being, did then and there knowingly, willfully, and unlawfully have and possess certain intoxicating liquor, to wit, ten (10) one-fifth gallons and nineteen (19) ounces of a certain liquor known as gin, three (3) one-fifth gallons of a certain liquor known as whiskey, five (5) pints of a certain liquor known as champagne, and two hundred ninety-nine (299) pints of a certain liquor known as beer, then and there containing more than one-half of one per centum of alcohol by volume and then and there fit

for use for beverage purposes, a more particular description of the amount and kind whereof being to the said United States Attorney unknown, intended then and there by the said Frank Gatt, John Gatt, William Parent, *alias* William Perrin, and Angelo Mustillo, for use in violating the Act of Congress passed October 28, 1919, known as the National Prohibition Act, by selling, bartering, exchanging, giving away, and furnishing the said intoxicating liquor, which said possession of the said intoxicating liquor by the said Frank Gatt, John Gatt, William Parent, *alias* William Perrin, and Angelo Mustillo, as aforesaid, was then and there unlawful and prohibited by the Act of Congress known as the National Prohibition Act; contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [3]

And the said United States Attorney for the said Western District of Washington, further informs the Court:

COUNT II.

That prior to the commission by the said FRANK GATT of the said offense of possessing intoxicating liquor herein set forth and described in manner and form as aforesaid, said FRANK GATT, on the 8th day of November, 1922, in cause No. 5993, at Seattle, in the United States District Court for the Western District of Washington, Northern Division, was duly and regularly convicted of the offense of possessing intoxicating liquor on the 16th day of May, 1921, in violation of the said Act of Congress known

as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [4]

And the said United States Attorney for the said Western District of Washington further informs the Court:

COUNT III.

That prior to the commission by the said ANGELO MUSTILLO of the said offense of possessing intoxicating liquor herein set forth and described in manner and form as aforesaid, said ANGELO MUSTILLO, on the fifth day of June, 1923, in cause No. 7334, at Seattle, in the United States District Court for the Western District of Washington, Northern Division, was duly and regularly convicted of the offense of possessing intoxicating liquor on the 16th day of December, 1922, in violation of the said Act of Congress known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America. [5]

And the said United States Attorney for the said Western District of Washington, further informs the Court:

COUNT IV.

That on the eleventh day of November in the year of our Lord one thousand nine hundred and twenty-three, about 8 miles north of the City of Seattle, in the Northern Division of the Western District of Washington, and within the jurisdic-

tion of this court, and at a certain place known as the Lakeview Roadhouse, FRANK GATT, JOHN GATT, WILLIAM PARENT, *alias* WILLIAM PERRIN, and ANGELO MUSTILLO, then and there being, did then and there and therein knowingly, willfully, and unlawfully conduct and maintain a common nuisance by then and there manufacturing, keeping, selling, and bartering intoxicating liquors, to wit, gin, whiskey, champagne, beer, and other intoxicating liquors containing more than one-half of one per centum of alcohol by volume and fit for use for beverage purposes, and which said maintaining of such nuisance by the said FRANK GATT, JOHN GATT, WILLIAM PARENT, *alias* WILLIAM PERRIN, and ANGELO MUSTILLO, as aforesaid, was then and there unlawful and prohibited by the Act of Congress passed October 28, 1919, known as the National Prohibition Act; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

THOS. P. REVELLE,

United States Attorney.

J. W. HOAR,

Special Assistant United States Attorney.

[Endorsed]: Filed Mar. 6, 1924. [6]

[Title of Court and Cause.]

ARRAIGNMENT AND PLEA.

Now on the 7th day of April, 1924, the above defendants Frank Gatt and Angelo Mustillo come into open court for arraignment, accompanied by their attorney Bert Northrup and say their true names are Frank Gatt and Angelo Mustillo. Whereupon, the Information is read and they here and now enter their pleas of not guilty. Plea of John Gatt is continued to day of trial.

Journal No. 12, page No. 145. [7]

[Title of Court and Cause.]

TRIAL.

Now on this 4th day of June, 1924, the above defendants come into open court for trial. Defendants Frank Gatt, John Gatt and Angelo Mustillo are present in court with their attorney John F. Dore and C. T. McKinney is present in behalf of the Government. Defendant John Gatt is now arraigned and says that his true name is John Gatt. Whereupon he here and now enters his plea of not guilty. A jury is empanelled and sworn as follows: T. H. Pattison, Claude F. Jaynes, P. S. Turner, Abner Brown, Don Gartside, Claude A. Andrews, Sydney Nourse, John P. Hayes, M. A. Jewell, Hamilton G. Dawson, William Bullock, and John Bachmann. Opening statement is made to the jury

for the Government by C. T. McKinney. Government witnesses are sworn and examined as follows: Gordon B. O'Harra, Charles A. McFarland, W. M. Whitney, and Walter M. Justi. Government exhibits numbered 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, and 11 are introduced as evidence. Government rests. Each of the above-named defendants challenges the sufficiency of the Government's evidence and moves for a dismissal. Said motion is denied and exception is allowed. Defendant's witnesses are sworn and examined as follows: Angelo Mustillo, Frank Gatt, John Gatt and James A. Lochrane. Defendant's Exhibit "A" is introduced as evidence. Defendants rest. Defendants challenge the sufficiency of the Government's evidence and move for a directed verdict as to all defendants. Said motion is granted as to John Gatt and the Clerk is ordered to enter a judgment of not guilty as to said John Gatt and judgment of not guilty is now accordingly entered as to said John Gatt. The motion is denied as to defendants Frank Gatt and Angelo Mustillo. Exception is allowed. [8] Said cause is argued to the jury for both sides and the jury after being instructed by the Court, retires for deliberation. Jury again came into court at 3:20 o'clock P. M. Defendants and attorneys for both sides are present and the jury return a verdict of guilty as to Frank Gatt and Angelo Mustillo. Sentence for defendants Frank Gatt and Angelo Mustillo are passed at this time. Verdict is ordered filed and reads as follows: "We, the jury in the

above-entitled cause, find the defendant, Frank Gatt, is guilty as charged in Count I of the Information herein; and further find the defendant, Angelo Mustillo, is guilty as charged in Count I of the Information herein; and further find the defendant, Frank Gatt, is guilty as charged in Count II of the Information herein; and further find the defendant, Angelo Mustillo, is guilty as charged in Count III of the Information herein; and further find the defendant, Frank Gatt, is guilty as charged in Count IV of the Information herein; and further find the defendant, Angelo Mustillo, is guilty as charged in Count IV of the Information herein. C. A. Andrus, Foreman.”

John F. Dore, attorney for defendants, Frank Gatt and Angelo Mustillo, moves orally in open court for a new trial for said defendants, and the Court having considered the motion denies the same, with exception allowed defendants. Upon motion of said defendants for an order fixing the amount of supersedeas bond on appeal, it is ordered that the same be fixed for defendant Frank Gatt in the sum of \$1000.00, and for defendant Angelo Mustillo, in the sum of \$750.00.

Whereupon court stands adjourned to June 5, 1924, at 10 A. M.

Journal No. 12, page No. 263. [9]

[Title of Court and Cause.]

VERDICT.

We, the jury of the above-entitled cause, find the defendant, Frank Gatt, is guilty as charged in Count I of the Information herein; and further find the defendant, Angelo Mustillo, is guilty as charged in Count I of the Information herein; and further find the defendant, Frank Gatt, is guilty as charged in Count II of the Information herein; and further find the defendant, Angelo Mustillo, is guilty as charged in Count III of the Information herein; and further find the defendant, Frank Gatt, is guilty as charged in Count IV of the Information herein; and further find the defendant, Angelo Mustillo, is guilty as charged in Count IV of the Information herein.

C. A. ANDRUS,
Foreman.

[Endorsed]: Filed Jun. 4, 1924. [10]

[Title of Court and Cause.]

SENTENCE (FRANK GATT).

Comes now on this 4th day of June, 1924, the said defendant, Frank Gatt, into open court for sentence and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and

judgment had against him, and he nothing says save as he before hath said, wherefore, by reason of the law and premises, IT IS CONSIDERED ORDERED, and ADJUDGED by the Court that the defendant is guilty of violating the National Prohibition Act and that he be punished by being imprisoned in the King County Jail or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States for the period of 100 days on Count IV and to pay a fine of \$250.00 on Count I, and the defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution.

Judgment & Decree Book No. 4, page 142. [11]

[Title of Court and Cause.]

SENTENCE (ANGELO MUSTILLO).

Comes now on this 4th day of June, 1924, the said defendant, Angelo Mustillo, into open court for sentence, and being informed by the Court of the charges herein against him and of his conviction of record herein, he is asked whether he has any legal cause to show why sentence should not be passed and judgment had against him and he nothing says save as he before hath said, wherefore, by reason of the law and the premises, it is CONSIDERED, ORDERED, and ADJUDGED by the Court that the defendant is guilty of violating the

National Prohibition Act and that he be punished by being imprisoned in the King County Jail or in such other prison as may be hereafter provided for the confinement of persons convicted of offenses against the laws of the United States for the period of fifty days on Count IV and to pay a fine of \$100.00 *Dollars* on Count I, and the defendant is hereby remanded into the custody of the United States Marshal to carry this sentence into execution.

Judgment & Decree Book No. 4, page 142. [12]

[Title of Court and Cause.]

PETITION FOR WRIT OF ERROR.

In the Above-entitled Court, and to the Honorable
GEORGE M. BOURQUIN, Judge thereof:

Comes now the above-named defendants, Frank Gatt and Angelo Mustillo, and by his attorney and counsel, respectfully shows that on the 4th day of June, 1924, a jury impaneled in the above-entitled court and cause, returned a verdict finding the defendants above named guilty of the charge in Counts 1, 2, 3 and 4 of the Information contained, which information was theretofore filed in the above-entitled court and cause, and thereafter, and within the time limited by law, under rules and order of this Court, said defendants moved for a new trial, which said motion was by the Court overruled and

exception thereto allowed; and likewise within said time filed their motion for arrest of judgment, and which was by the Court overruled, and to which an exception was allowed; and thereafter and on the 4th day of June, 1924, said defendants was, by order and judgment of the Court above entitled, in said cause, sentenced to *service*, in the case of Frank Gatt to one hundred days in the County Jail, and a fine of \$250.00, and in the case of Angelo Mustillo, to fifty days in the [13] county jail and a fine of \$100.00.

And your petitioners, feeling themselves aggrieved, by this verdict, and the judgment and sentence of the Court, entered herein as aforesaid, and by the orders and rulings of this Court, and proceedings in said cause, now herewith petitions this court for an order allowing them to prosecute a writ of error from said judgment and sentence to the Circuit Court of Appeals of the United States for the Ninth Circuit, under the laws of the United States, and in accordance with the procedure of said court made and provided, to the end that said proceedings as herein recited, and as more fully set forth in the assignment of errors presented herein, may be reviewed and manifest error appearing upon the face of the record of said proceedings, and upon the trial of said cause, may be by the Circuit Court of Appeals corrected, and for that purpose a writ of error thereon should issue as by law and the rulings of the Court provided, and wherefore, premises considered, your petitioners pray that a writ of error issue to the end that said proceedings of the District

Court of the United States for the Western District of Washington, may be reviewed and corrected, said errors in said record being herewith assigned and presented herewith, and that pending the final termination of said writ of error by said Appellate Court, an order may be entered herein that all further proceedings be suspended and stayed, and that pending such final determination, said defendants be admitted to bail.

JOHN F. DORE,
Attorney for Petitioners. [14]

Acceptance of service of within petition for writ of error acknowledged this 4th day of June, 1924.

Attorney for Plaintiff.

[Endorsed]: Filed Jun. 4, 1924. [15]

[Title of Court and Cause.]

ASSIGNMENTS OF ERROR.

Comes now Frank Gatt and Angelo Mustillo, the above-named defendants, and each of them, and in connection with this petition for writ of error in this case submitted, and filed herewith, assign the following errors which the defendants aver and say occurred in the proceedings, and in the above-entitled court, and upon which they rely to reverse, set aside and correct the judgment and sentences entered herein, and say that there is manifest error appearing upon the face of the record and in the proceeding in this:

I.

That the Court erred in admitting the documents seized at Lake View Inn.

II.

That the Court erred in admitting the lumber bill.

III.

That the Court erred in permitting on cross-examination testimony as to the nationality of the codefendant Parent. [16]

IV.

That the Court erred in denying the motion for a directed verdict.

V.

That the Court erred in denying the motion for a new trial.

VI.

The Court erred in entering judgment and sentence upon the verdict.

VII.

The Court erred in admitting evidence as to telephone conversations and reputed ownership.

And as to each and every assignment of error, as aforesaid, defendants say that at the time of making the order or the ruling of the Court complained of, the defendants duly asked and were allowed an exception to the ruling and order of the Court.

JOHN F. DORE,

Attorney for Defendants.

Acceptance of service this 4th day of June, 1924.

THOS. P. REVELLE.

[Endorsed]: Filed Jun. 4, 1924. [17]

[Title of Court and Cause.]

ORDER ALLOWING WRIT OF ERROR AND
FIXING AMOUNT OF SUPERSEDEAS
BOND.

A writ of error is granted herein this 4th day of June, 1924, and it is further

ORDERED, that said defendants, Frank Gatt and Angelo Mustillo, be admitted to bail, and the amount of a supercedeas bond to be filed by said defendants be fixed in the sum of \$1,000 for Frank Gatt, and \$750.00 for Angelo Mustillo. Bonds to provide for payment of fines imposed as well as for surrender of defendants.

ORDERED, That upon said defendants Frank Gatt and Angelo Mustillo filing their said bonds in the aforesaid amounts in due form, to be approved by the Clerk of this court, they shall be released from custody pending the determination of the writ of error herein assigned.

Done in open court this 4th day of June, 1924.

BOURQUIN,
Judge.

Acceptance of service of within order allowing writ acknowledged this 4th day of June, 1924.

THOS. P. REVELLE,
Attorney for Plaintiff.

[Endorsed]: Filed Jun. 4, 1924. [18]

[Title of Court and Cause.]

SUPERSEDEAS BOND.

KNOW ALL MEN BY THESE PRESENTS: That we, Frank Gatt, as principal and National Surety Company, as surety, are held and firmly bound unto the United States of America, plaintiff in the above-entitled action, in the penal sum of One Thousand (\$1000.00) Dollars, lawful money of the United States, for the payment of which, well and truly to be made, we bind ourselves, our and each of our heirs, executors, administrators and assigns, jointly and severally, firmly by these presents.

The condition of this obligation is such, that whereas the above-named defendant, Frank Gatt was on the 4th day of June, 1924, sentenced in the above-entitled case to serve a period of one hundred days imprisonment in the county jail of King County, Washington, and pay a fine of Two Hundred Fifty (\$250.00) Dollars; And, whereas, the said defendant has sued out a writ of error from the sentences and judgment in said cause to the Circuit Court of Appeals of the United States for the Ninth Circuit; and whereas, the above-entitled Court has fixed the defendant's bond, to stay execution of the judgment in said cause, in the sum of One Thousand Dollars (\$1000.00);

Now, therefore, if the said defendant, Frank Gatt shall diligently prosecute his said writ of error to effect, and shall obey and abide by and render himself amenable to all orders which said Appellate Court shall make, or order to be made, in the prem-

ises, and shall render himself amenable to and obey all process issued, or ordered to be issued, by said Appellate Court herein, and shall perform any judgment made or entered herein by said Appellate Court, including the payment of any judgment on appeal, and shall not leave the jurisdiction of this court without leave being first had, and shall obey and abide by and render himself amenable to any and all orders made or entered by the District Court of the United States for the Western District of Washington, Northern Division, and will render himself amenable to and obey any and all orders issued herein by said District Court, and shall pursuant to any order issued by said District Court surrender himself and obey and perform any judgment entered herein by the said Circuit Court of Appeals or the said District Court, then this obligation to be void; otherwise to remain in full force and effect.

Sealed with our seals and dated this 4th day of June, 1924.

FRANK GATT,
Principal.

NATIONAL SURETY COMPANY,
By C. B. WHITE, (Seal)
Attorney-in-fact.

Approved.

F. M. HARSHBERGER,
Clerk.

Approved.

J. W. HOAR,
Spec. Asst. U. S. Atty.

[Endorsed]: Filed Jun. 4, 1924. [19]

[Title of Court and Cause.]

BAIL BOND PENDING WRIT OF ERROR.

We, Angelo Mustillo, as principal, and the National Surety Company, as surety, jointly and severally acknowledge ourselves indebted to the United States of America, in the sum of seven hundred and fifty dollars (\$750.00), lawful money of the United States of America, to be levied on our, and each of our goods, chattels, lands and tenements, upon this condition:

Whereas, the said Angelo Mustillo has sued out a writ of error from the judgment of the District Court of the United States for the Western District of Washington, Northern Division, in the cause and in said court wherein the United States of America was plaintiff and the said Angelo Mustillo is defendant, for a review of said judgment in the United States Circuit Court of Appeals for the Ninth Circuit.

Now, if the said Angelo Mustillo shall appear and surrender himself in the District Court of the United States for the Western District of Washington, Northern Division, on and after filing in said District Court of the mandate of the said Circuit Court of Appeals, and from time to time thereafter, as he may be required to answer any further proceedings, and abide and perform any judgment or order which may be had or rendered therein in this cause, and shall abide by and perform any judgment or order which may be rendered in said United States Circuit Court of Appeals for the Ninth

Circuit, and not depart from said District Court without leave thereof, then this obligation shall be void; otherwise to remain in full force and virtue.

WITNESS our hands and seals, this 4th day of June, 1924.

ANGELO MUSTILLO.
NATIONAL SURETY COMPANY.

By C. B. WHITE, (Seal)

Attorney-in-fact.

Approved.

F. M. HARSHBERGER,
Clerk.

Approved.

J. W. HOAR,
Spec. Asst. U. S. Atty.

[Endorsed]: Filed Jun. 4, 1924. [20]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING JUNE 30, 1924, FOR FILING BILL OF EXCEPTIONS.

For good cause shown, it is hereby ORDERED that the time for filing the bill of exceptions in the above-entitled cause be and the same hereby is extended to and including the 30th day of June, 1924.

WM. H. SAWTELLE,
Judge.

O. K.—C. T. McKINNEY,

Asst. U. S. Atty.

Copy rec'd., 6/30/24.

THOS. P. REVELLE,

U. S. Attorney.

[Endorsed]: Filed Jun. 30, 1924. [21]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING JULY 20, 1924, FOR FILING RECORD.

For good cause shown, it is hereby ORDERED that the time for preparing and filing the record in the above-entitled cause in the United States Court of Appeals for the Ninth Circuit be and the same hereby is extended to and including the 20th day of July, 1924.

Done in open court, this 20th day of June, 1924.

WM. H. SAWTELLE,

Judge.

O. K.—C. T. McKINNEY,

Asst. U. S. Atty.

Copy received 6/30/24.

THOS. P. REVELLE,

U. S. Attorney.

[Endorsed]: Filed Jun. 30, 1924. [22]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING SEPTEMBER 15, 1924, for FILING RECORD.

For good cause shown, it is ORDERED that the time for filing the record in the above-entitled cause in the office of the Clerk of the United States Court of Appeals for the Ninth Circuit be and the same hereby is extended to and including the 15th day of Sept., 1924.

Done in open court, this 23d day of July, 1924.

JEREMIAH NETERER,
Judge.

O. K.—C. T. McKINNEY,
Asst. U. S. Atty.

[Endorsed]: Filed Jul. 23, 1924. [23]

[Title of Court and Cause.]

ORDER EXTENDING TIME TO AND INCLUDING OCTOBER 31, 1924, FOR FILING RECORD.

For good cause shown, it is hereby ORDERED that the time for filing the record in the above-entitled cause in the Circuit Court of Appeals for the Ninth Circuit be and the same hereby is extended to and including the 31st day of October, 1924.

Done in open court this 17th day of October, 1924.

JEREMIAH NETERER,

Judge.

O. K.—J. W. HOAR,

Spec. Asst. U. S. Atty.

[Endorsed]: Filed Oct. 17, 1924. [24]

[Title of Court and Cause.]

BILL OF EXCEPTIONS.

BE IT REMEMBERED that on the 4th day of June, 1924, at the hour of 10:00 o'clock A. M., the above-entitled cause came on regularly for trial in the above-entitled court, before the Honorable George M. Bourquin, Judge thereof, the plaintiff appearing by Thomas P. Revelle and C. T. McKinney, United States Attorney and Assistant United States Attorney, respectively, and the defendants appearing in person and by John F. Dore, his counsel.

A jury having been regularly and duly impanelled and sworn to try the cause, and the Assistant United States Attorney having made a statement to the jury, the following evidence was thereupon offered:

TESTIMONY OF GORDON B. O'HARA, FOR
THE GOVERNMENT.

GORDON B. O'HARA, a witness produced on behalf of the Government, being duly sworn, testified as follows:

I was a federal prohibition agent on November 11, 1923. As such officer on that day I visited the Lakeview Inn, in Victory Highway, near Seattle. About 12:30 in the morning of November 11th, several of the agents, including myself, went to Lakeview Inn. [25] Two or three of us went to the back door and some went to the front door. We rang the door-bell or knocked on the door. A Japanese attendant came and looked out of the window, and then he went and got Billie Parent. He came and looked at us and refused to admit us. Some of us broke open the back door and some broke open the window and we gained admission that way and a search-warrant was served on them in that way. We searched the place. Upstairs in the room in the southeast corner of the building a secret cache was found. There was a board out over the door of the cache and several coat-hangers. There was one specially constructed coat-hanger that went clear through a hole and fastened on to the machinery on the inside. By pulling the coat-hanger out it released the locks to the door and it came open. In there we found eight sacks of Canadian beer, twenty-four bottles each; something over a hundred bottles of beer on ice, several bottles of gin, three

(Testimony of Gordon B. O'Hara.)

or four bottles of champagne and several bottles of whiskey in this cache. The defendant Mustillo was there. Parent was there, but neither of the Gatts were there. We made search of Mustillo's room in the basement and made a search of his person at that time. Nobody was with me when I went down. Mustillo asked me to destroy the papers I found in order that he might not be implicated in the case. The premises were a road-house, in the northeast corner of which was a little barroom with a large door and a large window. On the west side of this little room there was a bar in front, and all the bar fixtures. In the main room and just in front of this bar was the dancing-hall, and upstairs there were bedrooms and in the basement there were bedrooms and a kitchen. It is a large residence converted into a road-house. In this barroom they had whiskey serving-glasses and all the equipment for serving liquor.

Q. Showing you Government's Exhibit 1, marked for Identification, I will ask you if you have seen that before. [26]

A. Yes, I saw that before.

Q. Where?

A. The early morning of November 11th.

Mr. DORE.—Might I ask a few questions for the purpose of objecting to the competency of this evidence?

The COURT.—Yes.

(By Mr. DORE.)

Mr. O'Hara you had a search-warrant to search

(Testimony of Gordon B. O'Hara.)

for liquor, did you not?

The COURT.—Yes, he said so; all right.

Q. On that search-warrant you went through these rooms, this man's bedroom, and searched it for documents and papers?

A. In searching it for evidence—

Q. You found those as a result of the search?

A. I found these cards on the person of the defendant, and these slips I took out of his room.

Mr. DORE.—I object to what they found in the room.

The COURT.—The Court holds that counsel has a right to offer all these.

(Papers marked as an exhibit.)

Q. Do you know when the defendants Gatt were apprehended? A. No, I don't know.

Q. Who were the owners of these premises?

Mr. DORE.—I object to that as calling for a conclusion; that is a matter to be determined by the jury.

The COURT.—It may be a conclusion of an ultimate fact. If he knows the owner—whether he does, or not, may develop on cross-examination. If you know you may answer.

Same objection by defendant, and an exception allowed.

A. The defendants Gatt Brothers. Mustillo told me he was one of the employees there that did the serving, and those slips were his slips. He did not tell me by whom he was employed. (Tr., pp. 3-8.) [27]

(Testimony of Gordon B. O'Hara.)

Cross-examination.

Q. When you say the Gatts owned the place, what facts do you base that upon,—I mean of your own knowledge?

A. Well, more from the reputation of the place.

Q. You mean that you heard people say that the Gatts owned it?

A. Yes, people out in that neighborhood.

Q. You heard people out in that neighborhood say that John and Frank Gatt owned it? Did they mention both of them?

A. Both of them, the Gatt Brothers, on the same line; yes.

Q. Gatt Brothers? A. Yes, sir.

Q. That is what you base your answer on, was on reports?

A. Yes, sir, and on papers we got out of the defendants.

Mr. DORE.—I suggest that the Gatt Brothers owned the place be stricken on the ground that it is based on hearsay.

The COURT.—That is part of the proof of ownership, that those who are reputed to be owners in respect to all property are presumed to be in the law in many states by statute. Motion denied. Exception allowed. (Tr., pp. 8, 9.)

TESTIMONY OF CHARLES R. McFARLAND,
FOR THE GOVERNMENT.

CHARLES R. McFARLAND, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

My name is Charles R. McFarland. I operate the McFarland Lumber Company on East 125 Street and Victory Way, probably a mile and a quarter from Lakeview Inn. I sold one of the Gatt Brothers lumber. I identify Frank Gatt. I have a ledger sheet showing charges. Mr. Gatt came to my office. I took the lumber myself to Lakeview Inn. The bill has not been paid. No one was present on the premises when I delivered the lumber. I have a delivery slip, delivered July with the signature of John Gatt.

(Government's Exhibit 3, marked for Identification.) [28]

The lumber called for in Exhibit 3, my truck driver delivered. His name is Clint Lyle. I was not present when the signature was made. The bills are made out in the office; the driver takes the receipt when he delivers lumber.

Cross-examination.

I am positive I saw Frank Gatt in my office. I could not say what day nor what month it was. It was in the fall of 1923. The bill was \$2.84.

TESTIMONY OF W. M. WHITNEY, FOR THE
GOVERNMENT.

W. M. WHITNEY, a witness produced on behalf of the Government, being duly sworn, testified as follows:

Direct Examination.

I am assistant prohibition director for the State of Washington and was such November 11, 1923. On that day I visited the Lakeview Inn, on Victory Highway. A search-warrant was served. There were present Mr. Parent, the cook, a Japanese woman and Mustillo. We first searched the barroom, a little room in the northeast corner of the building, connected with the dance-hall. This dance-hall has booths with at least two seats in them on which they can be served on these little tables, and get up and dance on the floor on the floor in the center. There were two or three other small dining-rooms or serving-rooms on the north side of the house. The barroom had a cash register, a large number of whiskey glasses, cocktail glasses and small size beer glasses. In the cash register I found a number of checks which had been returned N. S. F., all endorsed. (Government's Exhibit 4 for Identification.) These were all found in the cash register. Also that notice of protest, Royal Bank of Canada, in the desk register. Witness describes the liquor found. I heard part of the conversation between Mustillo and O'Hara. He

(Testimony of W. M. Whitney.)

said he stayed at this place all the time and was responsible for serving the liquor. (Tr. pp. 16-19.)
[29]

Cross-examination.

Parent was downstairs. The Japanese maid had a room upstairs. And Mustillo was there. No liquor was found in Mustillo's room and none was found on him. He said he was an employee. (Tr. pp. 19, 20.)

TESTIMONY OF F. M. HARSHBERGER, FOR
THE GOVERNMENT.

Attorney for defendants admits the prior conviction set out in the two counts are correct.

Bottles of liquor received in evidence and marked Government's Exhibits 7, 8, 9 and 10, without objection.

Government's Exhibits 1 and 2 offered in evidence, to which defendants on the ground they were obtained as a result of an illegal search and seizure, the search-warrant calling for liquor.

The COURT.—When they once enter a house lawfully they can take everything that may be of an unlawful nature, or evidence of. It would be preposterous to say that if while searching for liquor they found a set of counterfeit moulds they could not take them. Objection overruled, an exception noted. Documents received in evidence.

Search-warrant and accompanying affidavit received in evidence, marked Government's Exhibit

11. Cards taken from the room of the defendant Mustillo, with the name of the Lakeview Inn upon them, and certain other information. One of the slips reads "43 beers \$43, 5 sacks beer \$60, 1/2 pint whiskey, 4 sandwiches \$4; \$3 for driver, total cash \$113.25."

Mr. McKINNEY.—These are customer's slips.

Mr. DORE.—I object on the ground that they are incompetent, irrelevant, and immaterial, not connected with the defendants, and not sufficiently identified.

Objection overruled. Exception allowed. (Tr., pp. 21-23.) [30]

Government's Exhibit 2, offered over the objection of the defendants, admitted, and an exception allowed.

Government's Exhibit 3 admitted over defendant's objection and an exception allowed.

The COURT.—I think this is identified. The exhibit will be admitted save and except the signature.

Mr. DORE.—Note an exception to the admission of any part of it.

Government's Exhibit 4, N. S. F. checks, admitted over the objection of the defendants and an exception allowed.

Government's Exhibits 7, 8, 9 and 10 admitted without objection. (Tr., pp. 24-25.)

TESTIMONY OF WALTER M. JUSTI, FOR
THE GOVERNMENT.

WALTER M. JUSTI, a witness produced on behalf of the Government, being duly sworn, testified as follows:

I was present on November 11, 1923, at the time the agents visited Lakeview Inn.

Q. I will ask you if you know who the proprietors of that place are?

A. Mr. John Gatt and Mr. Frank Gatt.

Objected to on the ground that it is hearsay. Objection overruled. Exception noted.

Cross-examination.

I know that they were the owners because I have been told so by telephone reports. I could not identify the people on the telephone. I don't know what money it was I had the telephone conversations. It was in the year 1923. Somebody called up on the telephone and said the Lakeview Inn was selling booze and was being operated by Frank Gatt and John Gatt. The person telephoning did not give his name. I do not know the name of any of the persons. I got from three to six telephone calls during the year 1923.

Mr. DORE.—I move that the testimony of this witness be stricken. [31]

The COURT.—Motion denied.

An exception noted.

W. M. WHITNEY, FOR THE GOVERNMENT
(RECALLED).

I know that the defendants Gatt own the place because I have been told so.

Mr. DORE.—I move that be stricken as hearsay, and the jury instructed to disregard it.

The COURT.—Denied. We know the Government owns this building. We know it by reputation. We didn't see the title deeds of anything of that sort. A disputable presumption of ownership arises from common reputation of ownership.

An exception is allowed.

Government rests.

Each of the defendants challenges the sufficiency of the evidence to sustain a verdict as to each and every count, and moves for a directed verdict. The motion is denied and an exception noted.

TESTIMONY OF ANGELO MUSTILLO, FOR
THE DEFENDANTS.

ANGELO MUSTILLO, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

My name is Mustillo, I was in the Lakeview Inn, as employed as janitor to take care of the grounds outside. I had nothing to do inside. I worked there six or seven months prior to the 11th of November, 1923. I was employed by William Parent. I heard the owner was John Valenti.

(Testimony of Angelo Mustillo.)

William Parent was the man who hired me and paid me my wages. The house contains six or seven rooms and the grounds are several acres. I was sleeping downstairs in the basement. I got \$75 a month and board. I never saw the papers that were in my room before. It is not my handwriting on any of them. My room in the basement was open at all times. I never owned any [32] liquor in the place.

Cross-examination.

I take care of the lawn. It is not a fact that the grounds surrounding the Lakeview Inn is a bunch of woods. I had to keep the property nice and clean. The front yard is about half an acre. I had to clean and to split wood. (Tr., pp. 32-35.)

TESTIMONY OF FRANK GATT, FOR THE DEFENDANTS.

FRANK GATT, a witness produced on behalf of the defendants, being fully sworn, testified as follows:

My name is Frank Gatt; I have been in the restaurant business and barber-shop, and owned the Monte Carlo on Fifth and Jackson for about five years. I never bought any lumber from McFarland Lumber Company; I was never in their office in my life. I never had the management or ownership of the Lakeview Inn. I collected money there. I collected money from William Parent.

(Testimony of Frank Gatt.)

He came down to my place of business, the Monte Carlo. I collected the money for James Lochnane, the owner of the land and building. I loaned Lochnane \$600, with the understanding I was to get it back out of the rent of the Lakeview Inn. I had a note for \$600 from Lochnane. When he paid the \$600 I gave the note back. These are some cancelled checks returned from the bank, endorsed Frank Gatt. That is my signature on the back. At times Mustillo or Parent would bring me down the rent partly in cash and partly in checks. I deposited the checks to my bank account, and when they came back N. S. F. I turned them back to Mustillo or Parent and demanded cash, which they paid. I absolutely owned no liquor in the place and had nothing to do with it. I have been out there two or three times. I collected the rent and applied it to Lochnane's debt and continued to collect the rent until I got the \$600. (Tr., pp. 38-41.)

Cross-examination. [33]

Lochnane was recommended to me by William Parent. Parent brought him down to my place of business. My name is Frank Gatt. I also know Parent by the name of Parenti. (Tr., pp. 42, 43.)

TESTIMONY OF JOHN GATT, FOR THE
DEFENDANTS.

JOHN GATT, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

(Testimony of John Gatt.)

Direct Examination.

I never had any interest in the Lakeview Inn. I had a chicken dinner there occasionally. I never did buy or receive any lumber for the place.

Cross-examination.

I am not in any business now. I was in the dance hall business with a man by the name of Seresse and my brother. We never was in business under the name of Gatt Brothers. The signature on Government's Exhibit 3, at the bottom, looks a little like mine. I was not interested in the Lakeview Inn. I knew Mustillo and also knew Parent.

Q. What is Parent's nationality, if you know?

Mr. DORE.—I object to that as incompetent, irrelevant and immaterial, the nationality of any defendant.

The COURT.—I think I can see the purpose; it is cross-examination; he may answer.

An exception is noted.

A. Italian.

Q. What is yours?

Same objection, same ruling, and an exception noted.

A. Italian.

TESTIMONY OF JAMES LOCHNANE, FOR
THE DEFENDANTS. [34]

JAMES LOCHNANE, a witness produced on behalf of the defendants, being duly sworn, testified as follows:

Direct Examination.

I was the owner of the land and the building on the land where the Lakeview Inn. was located. I leased it in 1922 and '23. Valenti was the man who leased it. Billie Parent was manager every time I was out there. I never had any dealings with Frank Gatt, except to borrow money from him. I gave him a note and when I paid the money back I got the note. Note marked Defendant's Exhibit "A." I sold the place some time the first of April. The ground is an acre.

Cross-examination.

Gatt collected the rent to pay back his note. The place was being used as a chicken dinner place. I met Valenti once at the bank at the corner of Fifth and Jackson Street. The lease was written in the bank. Frank Gatt was there at the time. His place is next door to the bank. He was one of the men who produced the lessee, the man who leased the place. And Billy Parent was there; that is how I happened to be down there. I have not seen Valenti since. I was getting \$75 a month for the place.

Defendants move for a dismissal and a directed verdict as to each of the defendants on each and every count of the indictment, and challenge the sufficiency of the evidence on each and every count.

Motion is sustained as to defendant John Gatt and a directed verdict granted. Motion denied as to the other defendants, and an exception allowed.

Defendants rest.

And now, in furtherance of justice, and that right may be done, the said defendants, Frank Gatt and Angelo Mustillo, tender and present to the court the foregoing as their bill of exceptions in the above-entitled cause, and prays that the same may be settled and allowed [35] and signed and sealed by the Court and made a part of the record in this cause.

JOHN F. DORE,
Attorney for Defendants.

Rec'd and approved.

C. T. McKINNEY,
Asst. U. S. Atty.

Acceptance of service of within bill of exceptions acknowledged this 30th day of June, 1924.

THOS. P. REVELLE,
U. S. Attorney.

[Endorsed]: Lodged Jun. 30, 1924.

[Endorsed]: Filed Oct. 4, 1924. [36]

[Title of Court and Cause.]

ORDER SETTLING BILL OF EXCEPTIONS.

The defendants, Frank Gatt and Angelo Mustillo, having tendered and presented the foregoing as their bill of exceptions in this cause to the action of the Court, and, in furtherance of justice and that right may be done them, and having prayed that the same may be settled and allowed, authenticated, signed and sealed by the Court and made a part of the record herein; and the Court having considered said bill of exceptions and all objections and proposed amendments made thereto by the Government, and being now fully advised, does now in furtherance of justice and that right may be done the defendants, sign, seal, settle and allow said bill of exceptions as the bill of exceptions in this cause, and does order that the same be made a part of the record herein.

The Court further certifies that each and all of the exceptions taken by the defendants, as shown in said bill of exceptions, were at the time the same were taken allowed by the Court.

The Court further certifies that said bill of exceptions contains all the material matters and evidence material to each and every assignment of error made by the defendants and tendered and filed in court in this cause with said bill of exceptions.

The Court further certifies that said bill of exceptions [37] was filed and presented to the court within the time provided by law, as extended by the orders of the court heretofore made herein.

Done and ordered in open court, counsel for the Government and defendants being now present, this 2 day of October, 1924.

BOURQUIN,
Judge.

O. K.—C. T. McKINNEY,
Asst. U. S. Atty.

[Endorsed]: Filed Oct. 4, 1924. [38]

[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of the Above-entitled Court:

You will please make a transcript of record on appeal to the Circuit Court of Appeals for the Ninth Circuit, in the above-entitled cause, and include therein the following:

Information.

Plea.

Record of trial and impanelling jury.

Verdict.

Motion in arrest of judgment.

Motion for new trial (minute entry).

Order denying motion for new trial (minute entry).

Judgment and sentence.

Petition for writ of error.

Assignments of Error.

Order allowing writ of error and fixing amount of bonds.

Appeal and bail bonds.

All orders extending time for filing bill of exceptions.

All orders extending time for filing record.

Bill of exceptions.

Order settling bill of exceptions.

Writ of error. [39]

Citation.

Defendants' praecipe.

JOHN F. DORE,
Attorney for Defendants.

We waive the provisions of the Act approved February 13, 1911, and direct that you forward typewritten transcript to the Circuit Court of Appeals for printing as provided under Rule 105 of this court.

JOHN F. DORE,
Attorney for Plaintiffs in Error.

[Endorsed]: Filed Oct. 16, 1924. [40]

[Title of Court and Cause.]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT OF RECORD.

United States of America,
Western District of Washington,—ss.

I, F. M. Harshberger, Clerk of the United States District Court for the Western District of Washington, do hereby certify this typewritten transcript of record, consisting of pages numbered from 1 to

40, inclusive, to be a full, true, correct and complete copy of so much of the record, papers, and other proceedings in the above and foregoing entitled cause as is required by the praecipe of counsel filed and shown herein, as the same remain of record and on file in the office of the clerk of said District Court, and that the same constitute the record on return to writ of error herein, from the judgment of said United States District Court for the Western District of Washington to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify the following to be a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by or on behalf of the plaintiff in error for making record, certificate or return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit: [41]

Clerk's fees (Sec. 828 R. S. U. S.) for making record, certificate or return, 84 folios at 15¢	\$12.60
Certificate of Clerk to transcript of record, 4 folios at 15¢	60
Seal to said certificate	20

I hereby certify that the above cost for preparing and certifying record, amounting to \$13.40, has been paid to me by attorney for plaintiff in error.

I further certify that I hereto attach and herewith transmit the original writ of error and the original citation issued in this cause.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court,

at Seattle, in said District, this 23d day of October, 1924.

[Seal] F. M. HARSHBERGER,
Clerk United States District Court, Western Dis-
trict of Washington. [42]

[Title of Court and Cause.]

WRIT OF ERROR.

The United States of America,—ss.

The President of the United States of America,
to the Honorable Judges of the District Court
of the United States for the Western District
of Washington, Northern Division, GREET-
ING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said District Court, before the Honorable George M. Bourquin, between Frank Gatt and Angelo Mustillo, the plaintiffs in error, and the United States of America, the defendant in error, a manifest error hath happened to the prejudice and great danger of Frank Gatt and Angelo Mustillo, plaintiffs in error, as by their complaint and petition herein appears, and we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, DO COMMAND YOU, if judgment be therein given, that under your seal, distinctly and openly, you send the record and proceedings

with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, at the City of San Francisco, [43] State of California, together with this writ, so that you have the same at said City of San Francisco within thirty days from the date hereof, in said Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being then and there inspected, said United States Circuit Court of Appeals may cause further to be done therein to correct the error what *or writ*, and according to the laws and customs of the United States of America should be done in the premises.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 4th day of June, 1924, and the year of the Independence of the United States one hundred and forty-seven.

[Seal] F. M. HARSHBERGER,
Clerk of the District Court of the United States
for the Western District of Washington, North-
ern Division.

Acceptance of service of within writ of error,
acknowledged this 4th day of June, 1924.

Attorney for Plaintiff. [44]

Copy received May 4, 1924.

THOS. P. REVELLE,
Atty. for Ptff.

[Endorsed]: Filed Jun. 4, 1924. [45]

[Title of Court and Cause.]

CITATION ON WRIT OF ERROR.

United States of America,—ss.

The President of the United States of America, to
the United States of America, and to THOMAS
P. REVELLE, United States Attorney for the
Western District of Washington, Northern
Division, GREETING:

You are hereby cited and admonished to be and
appear before the United States Circuit Court of
Appeals for the Ninth Circuit at San Francisco,
in the State of California, within thirty days from
the date hereof, pursuant to a writ of error filed in
the clerk's office of the District Court of the United
States for the Western District of Washington,
Northern Division, wherein Frank Gatt and Angelo
Mustillo are plaintiffs in error, and the United
States of America is defendant in error, to show
cause, if any there be, why judgment in the said writ
of error mentioned should not be corrected and
speedy justice should not be done to the parties in
that behalf.

June 4, 1924.

BOURQUIN,

U. S. District Judge. [46]

Copy received May 4, 1924.

THOS. P. REVELLE,

Atty. for Ptff.

[Endorsed]: Filed Jun. 4, 1924. [47]

[Endorsed]: No. 4691. United States Circuit Court of Appeals for the Ninth Circuit. Frank Gatt and Angelo Mustillo, Plaintiffs in Error, vs. United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Northern Division.

Filed September 14, 1925.

F. D. MONCKTON,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

